IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. DANIEL HENRY BRESLER, Appellant.	No. 38606-2-II UNPUBLISHED OPINION

Penoyar, J. — Daniel Bresler appeals his convictions of attempting to elude a police vehicle and third degree driving while license suspended or revoked. He argues that the trial court erred by (1) denying his motion to arrest judgment based on lack of jurisdiction and insufficient evidence, (2) denying his motion for a new trial where the trial court did not hold a Criminal Rule (CrR) 3.5 hearing, and (3) instructing the jury with pattern jury instructions—rather than his proposed instructions—on the attempting to elude charge. Bresler also asserts that he received ineffective assistance of counsel, and he raises numerous other claims in his statement of additional grounds (SAG).[1] We affirm.

FACTS

I. Background

On January 3, 2008, at 3:29 a.m., Jefferson County Deputy Sheriff Brett Anglin was parked at the west end of Hood Canal Bridge in Jefferson County. Through binoculars, Anglin observed the license plates of eastbound cars, and he checked the plates against a police database. The headlights on Anglin's patrol vehicle were illuminated, and the vehicle had a Jefferson County

[1] RAP 10.10.

Sheriff's emblem, a "fully functional light bar" on top and front grill and rear lights. Report of Proceedings (RP) (Sept. 23, 2008) at 49.

Anglin checked the plates of an eastbound Buick Century and determined that the registered driver, Bresler, had a suspended driver's license and outstanding Jefferson County arrest warrants. Anglin followed Bresler eastward across the bridge towards Kitsap County. Anglin did not turn on his overhead lights or siren because he was waiting for confirmation that Bresler's warrants were still valid. Anglin stated that Bresler "significantly" exceeded the 40 mph speed limit on the bridge.[2] RP (Sept. 23, 2008) at 93.

Anglin received confirmation that Bresler's warrants were valid as he pulled within 100 feet of Bresler at the eastern end of the bridge. At the stoplight there, Bresler signaled left, but then made a quick right turn onto Highway 3 without signaling right, followed by another quick right turn onto Bridge Way, a dead-end street. Bresler stopped his car in the middle of Bridge Way, left the engine running, and turned off his lights.

At trial, Anglin and Bresler gave different accounts about what happened next. Anglin testified that he stopped within two or three car lengths of Bresler's car and turned on his overhead lights and spotlight. Anglin was wearing his sheriff's uniform, which included a badge and a Jefferson County patch. Anglin observed a German shepherd sitting upright in Bresler's passenger seat. Anglin approached Bresler's car carrying a flashlight and asked Bresler to roll down his window. Bresler refused to roll it down more than one inch. Anglin identified himself, informed Bresler that the Buick's registered owner had a suspended license and outstanding

[2] Anglin testified that when he began to cross the bridge, Bresler was not yet halfway across. Anglin reached a speed of over 100 mph in order to catch up to Bresler.

warrants, and asked for Bresler's name and identification. Bresler stated that he had no identification and told Anglin that his last name was "Bolland." RP (Sept. 23, 2008) at 57. Anglin observed that Bresler's height, weight and eye color matched the owner's physical description. Anglin told Bresler that he knew that Bresler was the registered owner, and he ordered Bresler to step out of the vehicle or else he would break the window. Bresler responded, "[I am] not going back to that jail" and sped off. RP (Sept. 23, 2008) at 59.

Bresler's testimony about this interaction differed significantly. Bresler described Bridge Way as a regular stopping place between casinos[3] where he could relieve himself and let Blacky, his German shepherd, out of the car. That night, Bresler had played at a casino and carried over $8,000 in cash. Less than a minute after stopping on Bridge Way, Bresler observed "someone at my window with a light in my eyes." RP (Sept. 24, 2008) at 139. Bresler could see only the flashlight, and Blacky's barks prevented Bresler from hearing what the person said. Bresler cracked the window one inch and heard, "Roll it down now or I'm going to smash it." RP (Sept. 24, 2008) at 142. Fearing an imminent attack, Bresler "slammed [the car] in drive and punched it." RP (Sept. 24, 2008) at 143.

Anglin returned to his vehicle, turned on his lights and siren, and pursued Bresler on Bridge Way at a high rate of speed. Bresler testified that he never looked in his rearview mirror because he was "running from a threat." RP (Sept. 24, 2008) at 145. At Bridge Way's dead end, Bresler followed a dirt access road back up towards the bridge. Anglin followed in pursuit and saw Bresler run over a large bump at a high rate of speed, causing Blacky's head to hit the car's

[3] Bresler referred to his occupation as "card player" and "[g]ambler" and stated that he visited casinos five days a week. RP (Sept. 24, 2008) at 130.

ceiling. At the end of the dirt road, Bresler maneuvered his car through concrete jersey barriers and entered the roadway in front of a truck on the east end of the bridge without stopping, slowing, or signaling,[4] and he continued east on Highway 104.

Bresler ran the red light at the end of the bridge without slowing down, and he turned left to follow Highway 104 in the direction of Port Gamble. On Highway 104, a car with the right of way in the eastbound lane stopped for Bresler because of Bresler's high speed. Anglin pursued Bresler, driving in excess of 100 mph, but did not gain ground on him.

Anglin decided that pursuing Bresler was not safe. He stopped and called for assistance. Officers eventually located Bresler's vehicle stuck in mud in a private driveway about one and half miles along Highway 104. Bresler stood outside of his vehicle. Anglin repeatedly asked Bresler to get on the ground, but Bresler refused saying that he wanted a state trooper to respond. Anglin subdued Bresler with a taser and placed him under arrest.

The State charged Bresler with attempting to elude a police vehicle,[5] making a false or misleading statement to a public servant,[6] and third degree driving while license suspended or revoked.[7]

[4] Bresler testified that he flashed his headlights at the truck.

[5] RCW 46.61.024.

[6] RCW 9A.76.175.

[7] RCW 46.20.342.

II. Trial

In a pretrial motion, Bresler moved in limine to exclude his statement "I'm not going back to that jail"[8] on the basis of relevance and unfair prejudice. Clerk's Papers (CP) at 58. The trial court denied the motion, stating "it seems to me that this language goes directly to [Bresler's] motive in acting the way the State is saying that he acted." RP (Sept. 23, 2008) at 22.

A. Voir Dire

During voir dire, prospective juror 11 stated that he knew Anglin. The trial court conducted a "private interview[ ]" of that juror. RP (voir dire) at 2. Prospective juror 11 told the trial court that Anglin had held a grudge against him since high school and now regularly gave him traffic tickets for no reason. Prospective juror 11 stated that he "wouldn't believe a word out of [Anglin's] mouth." RP (voir dire) at 4. The State challenged prospective juror 11 for cause and the trial court dismissed him.

Later during voir dire, prospective juror 25 stated that he had read about an incident on Hood Canal Bridge and had an "immediate reaction" to the news. RP (voir dire) at 5-6. Based on that article, prospective juror 25 said he would find Bresler guilty. Prospective juror 35 also stated that he had read about an incident on the bridge, and he stated that Bresler "just looks guilty." RP (voir dire) at 7. Bresler's counsel asked if any other prospective jurors felt that Bresler was guilty based on his appearance, but none responded. The record does not indicate whether the trial court dismissed prospective jurors 25 and 35.

[8] Contrary to Anglin's testimony, Bresler testified that he stated, "Please don't let them take me back to that jail" after his arrest rather than after Anglin's traffic stop. RP (Sept. 24, 2008) at 162.

B. Discussion about CrR 3.5 Hearing

After the close of the State's rebuttal case, the following colloquy occurred:

> COURT: I just had a thought. Was there a [CrR] 3.5 hearing done in this case?
> DEFENSE: No, Your Honor.
> COURT: [Counsel], do you agree?
> STATE: That's correct.
> COURT: All right. How did we get all the statements of the defendant in, then, without a [CrR] 3.5 hearing?
> STATE: It was never requested by the defense.
> COURT: [Counsel]?
> DEFENSE: That's correct, Your Honor.
> COURT: All right. So you are not objecting to the statements coming in?
> DEFENSE: No, Your Honor.

RP (Sept. 24, 2008) at 205-06. A short while later, the State asked Bresler to sign a stipulation stating that he volunteered all of his remarks in a noncustodial setting. Bresler declined to sign, and his counsel stated, "Our theory of the case is that [Bresler] . . . didn't know the person was a police officer; therefore, he didn't know he was in custody." RP (Sept. 24, 2008) at 215. Bresler informed the trial court, however, that he would sign a stipulation that the statements were admissible.[9]

C. Instruction Conference

The State proposed pattern jury instructions for the attempting to elude charge. 11A Washington Practice: Washington Pattern Jury Instructions: Criminal 94.01-94.02, at 331-35 (3d ed. 2008) (WPIC). Bresler proposed adding language that would require the State to prove that the defendant knew that the person signaling him to stop was a police officer in a police car.

Bresler cited *State v. Stayton*, 39 Wn. App. 46, 691 P.2d 596 (1984) as support for adding

[9] No such stipulation appears in the record.

his proposed language.[10] After reviewing *Stayton,* the trial court stated:

> [T]he *Stayton* case . . . supported somewhat what [Bresler] was proposing. However, rather than modify all of the WPICs to comport with [Bresler's] proposals, I instead added . . . the WPIC definition of the word "willfully"[11] . . . at Instruction No. 9.
>
> It is clear to me that the element of "knowingly" has to be part of this act. And I think simply defining "willfully" as indicated by the WPIC is out of the quagmire of modifying all of the instructions.

RP (Sept. 24, 2008) at 208-09. The trial court accepted the pattern instructions and rejected Bresler's proposed instructions. The pattern definition of "attempting to elude a pursuing police vehicle" became instruction 8, the pattern definition of "willfully" became instruction 9, and the pattern "[t]o convict" instruction became instruction 19. CP at 73, 74, 84. Bresler took exception to each.

On September 25, 2008, the jury acquitted Bresler of making a false statement and

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[10] *Stayton* involved a conviction for attempting to elude a police vehicle. 39 Wn. App. at 47. The trial court granted the defendant a new trial because it determined the third element in the to-convict instruction—"[t]hat the defendant willfully failed or refused to immediately bring his vehicle to a stop"—failed to sufficiently set forth an element of the crime because it did not require that the defendant's "willful failure to stop" occurred while the defendant was in the process of attempting to elude the police vehicle. 39 Wn. App. at 48-49. We reversed, holding that a defendant's "willful failure to stop" does not need to occur while the defendant attempts to elude a police vehicle. 39 Wn. App. at 50. Rather, a "willful failure to stop" need only occur after the officer gives a signal to stop. 39 Wn. App. at 50. In our discussion, we noted:

> There can be no "attempt to elude" unless there is the prerequisite knowledge that there is "a pursuing police vehicle." There can be no willful failure to stop unless there is the prerequisite knowledge that a statutorily appropriate signal has been given by a statutorily appropriate police officer.

39 Wn. App. at 49-50.

[11] The pattern instruction reads: "A person acts willfully when he or she acts knowingly." 11 WPIC 10.05, at 214-15.

convicted him of the other counts. The State offered Bresler a lenient sentencing recommendation if he waived his right to appeal. At a sentencing hearing on October 10, the trial court assigned Bresler new counsel to advise him about whether he should waive his right to appeal. On November 21, 2008, the trial court held the rescheduled sentencing hearing. Bresler declined to waive his right to appeal. New counsel made various arguments related to jurisdiction and a new trial which we address in this opinion.

The trial court denied Bresler's motions and sentenced him to 30 days for attempting to elude and to a 90 day suspended sentence for driving while license suspended or revoked. Bresler now appeals.

ANALYSIS

I. Motion To Arrest Judgment

Bresler argues that the trial court erred by denying his motion to arrest judgment[12] based on lack of jurisdiction. However, Bresler's motion occurred nearly two months after his conviction and was therefore untimely under CrR 7.4(b)'s 10 day rule. In any event, because Bresler pleaded not guilty and appeared at trial, the trial court had personal jurisdiction over him. *See State v. Blanchey*, 75 Wn.2d 926, 938, 454 P.2d 841 (1969). Also, the Kitsap County Superior Court is a court of general jurisdiction with subject matter jurisdiction over Bresler's crimes. *See* Wash. Const. art. IV, § 6; RCW 2.08.010. To the extent that Bresler challenges venue, the record clearly demonstrates that Bresler's crime of attempting to elude Anglin occurred entirely in Kitsap County. Thus, venue was proper under CrR 5.1(a)(1).

[12] For purposes of Bresler's argument, we accept his characterization of his objections to jurisdiction and sufficiency of the evidence at his November 21, 2008 sentencing hearing as motions to arrest judgment.

Bresler contends that the State presented insufficient evidence that he willfully eluded Anglin because he did not know that Anglin was a police officer. This argument was also untimely but fails in any case. The evidence, viewed in the light most favorable to the State, shows that Anglin activated his patrol car's overhead lights and spotlight while parked two to three car lengths behind Bresler's car on Bridge Way. Anglin approached Bresler's car while wearing a sheriff's uniform with a badge and a Jefferson County patch. He identified himself as a police officer. When Bresler fled, Anglin pursued him with his lights and siren activated. Under these facts, any juror could have found that Bresler knew that Anglin was a police officer.

II. Motion for New Trial

At his sentencing hearing, Bresler moved for a new trial based on the fact that the trial court did not hold a CrR 3.5 hearing with regard to his statement about jail. This motion was also untimely and not properly served under CrR 7.5(b). In any case, a CrR 3.5 hearing would not have aided Bresler.

Bresler implies that a CrR 3.5 hearing would have resulted in suppression because Anglin failed to give *Miranda*[13] warnings to Bresler. A police officer must give *Miranda* warnings when a suspect is taken into custody and interrogated. *State v. Daniels*, 160 Wn.2d 256, 266, 156 P.3d 905 (2007) (quoting *Berkemer v. McCarty*, 468 U.S. 420, 428, 104 S. Ct. 3138, 82 L. Ed. 2d 31 (1984)). *Miranda* does not apply to voluntary, spontaneous statements made outside of the context of custodial interrogation. *See State v. Ortiz*, 104 Wn.2d 479, 484, 706 P.2d 1069 (1985).

[13] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

Anglin testified that Bresler made the statement at the initial traffic stop just prior to fleeing. Bresler testified that he fled because he thought the individual at his car window was a potential robber or attacker, not a police officer. Because Bresler did not believe Anglin to be a police officer, Bresler was not in custody for purposes of *Miranda* and the trial court would not have suppressed his voluntary statement.[14]

According to Bresler's version of events, however, he made the jail statement after police arrested him. Bresler testified, "[When] I was in the mud and I figured out what was going on here, there was [a] Jefferson County Sheriff and a Kitsap County Sheriff, and I said something to the effect of -- to the Kitsap County Sheriff, I said, 'Please don't let them take me back to that jail.'" RP (Sept. 24, 2008) at 162. Although he was in custody under this scenario, Bresler's testimony demonstrates that he made this statement voluntarily and spontaneously rather in response to police interrogation.

III. Challenged Instructions

Bresler argues that the trial court erred by giving instructions 8, 9 and 19 without including language that the defendant knew that the signal to stop was given by a police officer in a police vehicle. He also assigns error to instructions 19 and 21—the "to convict" instructions for each crime—because neither included the county where the crime occurred as an element.[15] We

[14] At trial, defense counsel agreed that Bresler's jail statement was admissible. Counsel impliedly acknowledged that it would have been inconsistent for Bresler to argue that he did not know that Anglin was a police officer while at the same time asserting that he was in custody for purposes of *Miranda*.

[15] Both "to convict" instructions included as an element "[t]hat the acts occurred in the State of Washington." CP at 84, 86.

reject these claims.

We review challenged jury instructions de novo, evaluating them in the context of the instructions as a whole. *State v. Pirtle*, 127 Wn.2d 628, 656, 904 P.2d 245 (1995). We review a trial court's refusal to give an instruction based upon a ruling of law de novo. *State v. Walker*, 136 Wn.2d 767, 772, 966 P.2d 883 (1998).

A. Willful Failure to Stop

The attempting to elude statute reads in pertinent part:

> (1) Any driver of a motor vehicle who willfully fails or refuses to immediately bring his vehicle to a stop and who drives his vehicle in a reckless manner while attempting to elude a pursuing police vehicle, after being given a visual or audible signal to bring the vehicle to a stop, shall be guilty of a class C felony. The signal given by the police officer may be by hand, voice, emergency light, or siren. The officer giving such a signal shall be in uniform and the vehicle shall be equipped with lights and sirens.
>
> (2) It is an affirmative defense to this section which must be established by a preponderance of the evidence that: (a) A reasonable person would not believe that the signal to stop was given by a police officer; and (b) driving after the signal to stop was reasonable under the circumstances.

RCW 46.61.024. In *Stayton*, we noted, "There can be no 'attempt to elude' unless there is the prerequisite knowledge that there is 'a pursuing police vehicle.' There can be no willful failure to stop unless there is the prerequisite knowledge that a statutorily appropriate signal has been given by a statutorily appropriate police officer." 39 Wn. App. at 49-50.

The trial court's instructions here were appropriate. As we observed in *Stayton*, the State must necessarily prove—as part of meeting its burden on the "willful failure to stop" element—that the defendant knew that a police officer gave the signal and that he or she was being pursued by a police vehicle. 39 Wn. App. at 49-50. The trial court made this explicit by

including instruction 9, which read: "A person acts willfully when he or she acts knowingly." CP at 74. These instructions, taken as a whole, make it clear that the jury could not have convicted Bresler unless it believed that Bresler knew the Anglin gave him a signal to stop and that Bresler knew that Anglin pursued him in a police vehicle.

B. Venue as an Element

Bresler is incorrect that venue is an element that should have been included in the "to convict" instructions. Our Supreme Court has stated that venue is not an element of a crime, but rather a determination about the "proper forum before which a defendant may be tried." *State v. Dent*, 123 Wn.2d 467, 479, 869 P.2d 392 (1994) (quoting *State v. Hardamon*, 29 Wn.2d 182, 188, 186 P.2d 634 (1947)). As discussed above, Bresler waived his right to challenge venue and the record clearly demonstrates that venue was proper in Kitsap County.

IV. Ineffective Assistance of Counsel

Bresler contends that he received ineffective assistance[16] because his counsel failed to move to suppress his statement "I am not going back to that jail." Appellant's Br. at 3. As previously noted, Bresler's statement was either made in a non-custodial context or was voluntary. Therefore, Bresler's counsel was not deficient in failing to bring a suppression motion.

[16] To establish ineffective assistance of counsel, Bresler must show that (1) counsel's performance was deficient by an objective standard of reasonableness, and (2) that the deficient performance prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).

A. Ineffective Assistance Claims in SAG

1. Failure to Obtain Evidence

Bresler argues that his counsel should have obtained videotape footage from cameras on Hood Canal Bridge and in Anglin's patrol vehicle in addition to "all other" relevant police and fire department reports. SAG at 3.[17] These arguments fail.

The record demonstrates that Bresler's counsel acted reasonably in seeking out and presenting exculpatory evidence. First, Bresler's counsel specifically asked Anglin whether his patrol vehicle had functioning video or audio recording equipment. Anglin replied, under oath, that the "remnants" of the vehicle's recording system no longer functioned. RP (Sept. 23, 2008) at 91. Second, because the primary issue at trial was whether Bresler knew Anglin was a police officer, video footage from the bridge would have been of minimal importance to Bresler's defense. Finally, Bresler's reference to "other" police or fire department reports that may or may not exist cannot sustain an ineffective assistance claim.

2. Request to View Premises

Bresler asserts that his counsel was ineffective because he failed to make a CrR 6.9 request that the jury view the site of the crime so it could see that the "terrain and math doesn't & won't add up." SAG at 2. CrR 6.9 states: "The court may allow the jury to view the place in which any material fact occurred." The language of the rule is purely discretionary; a defendant does not have the right to have the jury view the site of the crime. Moreover, because Bresler's mental state was the key contested issue at trial, his counsel was not deficient for failing to ask the

[17] We have imposed page numbers on Bresler's SAG. Page 1 is the cover page of the brief that Bresler submitted.

trial court to allow the jury to view the site.

3. Cross-Examination

Bresler argues that his counsel did not subject Anglin to meaningful cross-examination or sufficiently impeach him with regard to trial testimony that contradicted his arrest report or earlier comments in a pretrial defense interview. However, the record reveals that Bresler's counsel performed an adequate cross-examination. When Anglin testified that he identified himself as a police officer to Bresler, defense counsel asked Anglin why he had failed to include this detail in his arrest report. Defense counsel also challenged other details of Anglin's trial testimony that Anglin did not mention in his arrest report or that conflicted with Anglin's comments at a pretrial defense interview.

4. Other Ineffective Assistance Claims

Bresler raises numerous other claims, including that his counsel failed to communicate about trial strategy; limited his advice to telling Bresler not to speak or wear blue jeans in court; failed to prepare Bresler as a witness; did not ask the trial court all the questions that Bresler wanted him to ask; failed to serve as an advocate with a sound trial strategy and essentially served as a second prosecutor; failed to move for a mistrial because of Anglin's contradictions; and prejudiced Bresler by calling him a "gambler" during opening statement. SAG at 10. Bresler also repeatedly argues that his counsel should not have suppressed Bresler's outstanding warrants for concealed weapons violations because Anglin's knowledge of these weapons warrants undermined Anglin's testimony about the traffic stop.

None of these arguments have merit. Many are self-serving claims that cannot be verified by the record. A thorough review of the record demonstrates that counsel acted as an effective

advocate for Bresler. Counsel hired a defense investigator, interviewed Anglin prior to trial, and impeached Anglin's version of events. Counsel's decision to move to suppress Bresler's warrants for concealed weapons was a sound trial strategy to prevent jury bias against his client. Finally, while counsel's opening statement is not in the record on appeal, Bresler himself referred to his occupation as "gambler" during direct examination. RP (Set. 24, 2008) at 130.

V. Other Claims in Statement of Additional Grounds (SAG)

A. Jury Issues

Bresler raises three jury-related SAG issues. First, he argues that the trial court should have dismissed the entire jury pool after prospective juror 35 stated, "[Bresler] just looks guilty," in front of the pool. SAG at 2; RP (voir dire) at 7. Second, he argues that the jury pool should have been permitted to hear prospective juror 11's statements, which he made during a "private interview," that he "wouldn't believe a word out of [Anglin's] mouth." SAG at 3; RP (voir dire) at 4. Finally, he contends that pretrial publicity prejudiced the jury pool.

We reject Bresler's arguments. First, it is unnecessary to dismiss an entire jury pool because of a single juror's prejudice. Indeed, one of the purposes of voir dire is to ferret out prospective jurors predisposed to prejudice and, in the process, educate the remaining jurors on their proper role. When Bresler's counsel asked if other prospective jurors thought that Bresler was guilty based on his appearance, none responded in the affirmative. Second, the trial court's interrogation of prospective juror 11 outside of the presence of the jury pool was appropriate given the fact that the juror had revealed his personal acquaintance with the State's only witness. Finally, with regard to pretrial publicity, the only two jurors who stated that they had read about an incident on Hood Canal Bridge—prospective jurors 25 and 35—also stated that they thought

Bresler was guilty. Such statements permitted Bresler to challenge these prospective jurors for cause. The record does not reveal that any other jurors were exposed to pretrial publicity.

B. Anglin's Credibility

In his SAG, Bresler repeatedly challenges Anglin's credibility. He states that Anglin's arrest report includes "inconsist[e]ncies and contradictions [and] . . . exaggerated details" and argues that Anglin's version of events "mathematically could not have taken place." SAG at 6. He points to alleged inconsistencies in Anglin's trial testimony and his pre-trial testimony with the defense investigator. We decline to review these claims because credibility determinations are for the trier of fact and not subject to review. *State v. Mines*, 163 Wn.2d 387, 391, 179 P.3d 835 (2008).

C. Prosecutorial Misconduct

Bresler argues that the prosecutor's closing statement contained facts not in evidence. He also asserts that the prosecutor expressed his personal belief in Bresler's guilt. However, Bresler fails to support these arguments with citations to the record or descriptions of the misconduct, and our review of the closing argument reveals that the prosecutor made no inappropriate statements.

D. Miscellaneous SAG Claims

Bresler raises a number of other SAG claims, including (1) "the math does not add up"; (2) Anglin had no authority to conduct a traffic stop outside of his jurisdiction; (3) Bresler's appellate counsel has a conflict of interest because Bresler must pay for the appeal if he loses; and (4) Bresler suffered prejudice at trial because he wore facial hair while none of the male jurors did. SAG at 3.

These SAG claims fail. Bresler's repeated and passionate emphasis on the distances involved in the police chase simply do not shed any light on Bresler's mental state as he fled from Anglin, the issue at the heart of his defense. Anglin had authority to stop Bresler because he drove with a suspended license and had outstanding warrants. *See* RCW 10.93.120(1). Bresler's allegation of appellate counsel's purported conflict of interest has no bearing on the conduct of Bresler's trial. Finally, Bresler's facial hair theory is entirely speculative.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Penoyar, J.

We concur:

Van Deren, C.J.

Houghton, J.